

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

V.

Brinker Restaurant

Corporation, a Virginia Corporation

Defendants.

Case No.

Complaint For Damages And Injunctive Relief For Violations Of: Americans With Disabilities Act; Unruh Civil Rights Act

Plaintiff Scott Johnson complains of Brinker Restaurant Corporation, a Virginia Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Brinker Restaurant Corporation owned Maggiano's Little Italy located at or about 3055 Olin Ave, San Jose, California, in September

1 2020 and October 2020.

2 3. Defendant Brinker Restaurant Corporation owns Maggiano's Little
3 Italy ("Restaurant") located at or about 3055 Olin Ave, San Jose, California,
4 currently.

5 4. Plaintiff does not know the true names of Defendants, their business
6 capacities, their ownership connection to the property and business, or their
7 relative responsibilities in causing the access violations herein complained of,
8 and alleges a joint venture and common enterprise by all such Defendants.
9 Plaintiff is informed and believes that each of the Defendants herein is
10 responsible in some capacity for the events herein alleged, or is a necessary
11 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
12 the true names, capacities, connections, and responsibilities of the Defendants
13 are ascertained.

14

15 **JURISDICTION & VENUE:**

16 5. The Court has subject matter jurisdiction over the action pursuant to 28
17 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
18 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19 6. Pursuant to supplemental jurisdiction, an attendant and related cause
20 of action, arising from the same nucleus of operative facts and arising out of
21 the same transactions, is also brought under California's Unruh Civil Rights
22 Act, which act expressly incorporates the Americans with Disabilities Act.

23 7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
24 founded on the fact that the real property which is the subject of this action is
25 located in this district and that Plaintiff's cause of action arose in this district.

26

27 **FACTUAL ALLEGATIONS:**

28 8. Plaintiff went to the Restaurant in September 2020 (three times) and

1 October 2020 with the intention to avail himself of their goods or services
2 motivated in part to determine if the defendants comply with the disability
3 access laws.

4 9. The Restaurant is a facility open to the public, a place of public
5 accommodation, and a business establishment.

6 10. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
7 to provide wheelchair accessible dining surfaces in conformance with the ADA
8 Standards as it relates to wheelchair users like the plaintiff.

9 11. The Restaurant provides dining surfaces to its customers but fails to
10 provide any wheelchair accessible dining surfaces.

11 12. One problem that plaintiff encountered is the lack of sufficient knee or
12 toe clearance under the outside dining surfaces for wheelchair users.

13 13. Plaintiff believes that there are other features of the dining surfaces that
14 likely fail to comply with the ADA Standards and seeks to have fully compliant
15 dining surfaces for wheelchair users.

16 14. On information and belief, the defendants currently fail to provide
17 wheelchair accessible dining surfaces.

18 15. These barriers relate to and impact the plaintiff's disability. Plaintiff
19 personally encountered these barriers.

20 16. As a wheelchair user, the plaintiff benefits from and is entitled to use
21 wheelchair accessible facilities. By failing to provide accessible facilities, the
22 defendants denied the plaintiff full and equal access.

23 17. The failure to provide accessible facilities created difficulty and
24 discomfort for the Plaintiff.

25 18. Even though the plaintiff did not confront the barrier, the restroom
26 mirror is too high. Plaintiff seeks to have this barrier removed as it relates to
27 and impacts his disability.

28 19. The defendants have failed to maintain in working and useable

1 conditions those features required to provide ready access to persons with
2 disabilities.

3 20. The barriers identified above are easily removed without much
4 difficulty or expense. They are the types of barriers identified by the
5 Department of Justice as presumably readily achievable to remove and, in fact,
6 these barriers are readily achievable to remove. Moreover, there are numerous
7 alternative accommodations that could be made to provide a greater level of
8 access if complete removal were not achievable.

9 21. Plaintiff will return to the Restaurant to avail himself of its goods or
10 services and to determine compliance with the disability access laws once it is
11 represented to him that the Restaurant and its facilities are accessible. Plaintiff
12 is currently deterred from doing so because of his knowledge of the existing
13 barriers and his uncertainty about the existence of yet other barriers on the
14 site. If the barriers are not removed, the plaintiff will face unlawful and
15 discriminatory barriers again.

16 22. Given the obvious and blatant nature of the barriers and violations
17 alleged herein, the plaintiff alleges, on information and belief, that there are
18 other violations and barriers on the site that relate to his disability. Plaintiff will
19 amend the complaint, to provide proper notice regarding the scope of this
20 lawsuit, once he conducts a site inspection. However, please be on notice that
21 the plaintiff seeks to have all barriers related to his disability remedied. See
22 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
23 encounters one barrier at a site, he can sue to have all barriers that relate to his
24 disability removed regardless of whether he personally encountered them).

25

26 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
27 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
28 Defendants.) (42 U.S.C. section 12101, et seq.)

1 23. Plaintiff re-pleads and incorporates by reference, as if fully set forth
2 again herein, the allegations contained in all prior paragraphs of this
3 complaint.

4 24. Under the ADA, it is an act of discrimination to fail to ensure that the
5 privileges, advantages, accommodations, facilities, goods and services of any
6 place of public accommodation is offered on a full and equal basis by anyone
7 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
8 § 12182(a). Discrimination is defined, inter alia, as follows:

- 9 a. A failure to make reasonable modifications in policies, practices,
10 or procedures, when such modifications are necessary to afford
11 goods, services, facilities, privileges, advantages, or
12 accommodations to individuals with disabilities, unless the
13 accommodation would work a fundamental alteration of those
14 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 15 b. A failure to remove architectural barriers where such removal is
16 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
17 defined by reference to the ADA Standards.
- 18 c. A failure to make alterations in such a manner that, to the
19 maximum extent feasible, the altered portions of the facility are
20 readily accessible to and usable by individuals with disabilities,
21 including individuals who use wheelchairs or to ensure that, to the
22 maximum extent feasible, the path of travel to the altered area and
23 the bathrooms, telephones, and drinking fountains serving the
24 altered area, are readily accessible to and usable by individuals
25 with disabilities. 42 U.S.C. § 12183(a)(2).

26 25. When a business provides facilities such as dining surfaces, it must
27 provide accessible dining surfaces.

28 26. Here, accessible dining surfaces have not been provided in

1 conformance with the ADA Standards.

2 27. When a business provides facilities such as restrooms, it must provide
3 accessible restrooms.

4 28. Here, accessible restrooms have not been provided in conformance with
5 the ADA Standards.

6 29. The Safe Harbor provisions of the 2010 Standards are not applicable
7 here because the conditions challenged in this lawsuit do not comply with the
8 1991 Standards.

9 30. A public accommodation must maintain in operable working condition
10 those features of its facilities and equipment that are required to be readily
11 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

12 31. Here, the failure to ensure that the accessible facilities were available
13 and ready to be used by the plaintiff is a violation of the law.

14

15 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
16 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
17 Code § 51-53.)**

18 32. Plaintiff repleads and incorporates by reference, as if fully set forth
19 again herein, the allegations contained in all prior paragraphs of this
20 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
21 that persons with disabilities are entitled to full and equal accommodations,
22 advantages, facilities, privileges, or services in all business establishment of
23 every kind whatsoever within the jurisdiction of the State of California. Cal.
24 Civ. Code § 51(b).

25 33. The Unruh Act provides that a violation of the ADA is a violation of the
26 Unruh Act. Cal. Civ. Code, § 51(f).

27 34. Defendants’ acts and omissions, as herein alleged, have violated the
28 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s

1 rights to full and equal use of the accommodations, advantages, facilities,
2 privileges, or services offered.

3 35. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
4 discomfort or embarrassment for the plaintiff, the defendants are also each
5 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
6 (c).)

7 36. Although the plaintiff encountered frustration and difficulty by facing
8 discriminatory barriers, even manifesting itself with minor and fleeting
9 physical symptoms, the plaintiff does not value this very modest physical
10 personal injury greater than the amount of the statutory damages.

11

12

PRAYER:

13 Wherefore, Plaintiff prays that this Court award damages and provide
14 relief as follows:

15 1. For injunctive relief, compelling Defendants to comply with the
16 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
17 plaintiff is not invoking section 55 of the California Civil Code and is not
18 seeking injunctive relief under the Disabled Persons Act at all.

19 2. For equitable nominal damages for violation of the ADA. See
20 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
21 and any other equitable relief the Court sees fit to grant.

22 3. Damages under the Unruh Civil Rights Act, which provides for actual
23 damages and a statutory minimum of \$4,000 for each offense.

24 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
25 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

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1 Dated: April 15, 2021

CENTER FOR DISABILITY ACCESS

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3 By: 
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5 Amanda Seabock, Esq.
6 Attorney for plaintiff
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